UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/CONF.164/22
23 August 1994

ORIGINAL: ENGLISH

UNITED NATIONS CONFERENCE ON
STRADDLING FISH STOCKS AND
HIGHLY MIGRATORY FISH STOCKS
Fourth session
New York, 15-26 August 1994

# DRAFT AGREEMENT FOR THE IMPLEMENTATION OF THE PROVISIONS OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA OF 10 DECEMBER 1982 RELATING TO THE CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

Prepared by the Chairman of the Conference

94-33870 (E) 250894 25/08/94

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# DRAFT AGREEMENT FOR THE IMPLEMENTATION OF THE PROVISIONS OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA OF 10 DECEMBER 1982 RELATING TO THE CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

The States Parties to this Agreement

Determined to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks,

Recalling the relevant principles of the United Nations Convention on the Law of the Sea of 10 December 1982,

Noting the need to improve cooperation between coastal States and States fishing on the high seas in order to assure conservation and management of straddling fish stocks and highly migratory fish stocks;

Calling for more effective enforcement by flag, port and coastal States of measures adopted for the conservation and management of such stocks,

Seeking to address the problems identified in Agenda 21, Chapter 17, Programme Area C, namely that the management of high seas fisheries is inadequate in many areas and that some resources are over-utilized; noting that there are problems of unregulated fishing, over-capitalization, excessive fleet size, vessel reflagging to escape controls, insufficiently selective gear, unreliable databases and lack of sufficient cooperation between States,

Committing themselves to responsible fishing,

Further noting the need for specific assistance including financial, scientific and technological assistance in order that developing States can participate effectively in the conservation, management and utilization of straddling fish stocks and highly migratory fish stocks,

Convinced that an agreement relating to the implementation of the relevant provisions of the Convention would best serve these purposes and contribute to the maintenance of international peace and security,

Affirming that matters not regulated by this Agreement continue to be governed by the rules and principles of general international law,

Have agreed as follows:

## PART I

## GENERAL PROVISIONS

### Article 1

### Use of terms and scope

1. For the purposes of this Agreement:

(a) "Convention" means the United Nations Convention on the Law of the Sea of 10 December 1982;

(b) "States Parties" means States which have consented to be bound by this Agreement and for which the Agreement is in force.

2. This Agreement applies mutatis mutandis to the entities referred to in article 305, paragraph 1(c), (d), (e) and (f), of the Convention which become Parties to this Agreement in accordance with the conditions relevant to each and, to that extent, "States Parties" refers to those entities.

3. The relevant principles of the Convention and this Agreement are applicable mutatis mutandis to other fishing entities whose vessels fish on the high seas.

### Article 2

### Objective

The objective of this Agreement is to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks.

### Article 3

### Application

1. Except as otherwise provided herein, this Agreement applies to the conservation and management of straddling fish stocks and highly migratory fish stocks beyond areas under national jurisdiction; provided that the provisions of articles 6 and 7 also apply to the conservation and management of straddling fish stocks and highly migratory fish stocks within areas under national jurisdiction.

2. In accordance with Part V of the Convention the coastal State has the obligation to conserve and manage straddling fish stocks and highly migratory fish stocks in areas under its national jurisdiction. In fulfilling its obligation the coastal State shall apply mutatis mutandis the measures referred to in article 5.

## Article 4

### Relationship between this Agreement and the Convention

Nothing in this Agreement prejudices the provisions of the Convention. The provisions of this Agreement shall be interpreted and applied in the context of and in a manner consistent with the provisions of the Convention.

## PART II

## CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

## Article 5

### General principles

Coastal States and States fishing on the high seas, in order to conserve and manage straddling fish stocks and highly migratory fish stocks, shall, in giving effect to their duty to cooperate in accordance with the Convention:

(a) adopt conservation and management measures to ensure long-term sustainability and promote optimum utilization of straddling fish stocks and highly migratory fish stocks;

(b) ensure that such measures are based on the best scientific evidence available and are designed to maintain or restore stocks at levels capable of producing the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global;

(c) apply the precautionary approach in accordance with article 6;

(d) adopt, where necessary, conservation and management measures for other species belonging to the same ecosystem or dependent upon or associated with the target species, with a view to maintaining or restoring populations of such species above levels at which their reproduction may become seriously threatened;

(e) promote the development and use of selective, environmentally safe and cost-effective fishing gear and techniques in order to minimize pollution, waste, discards, catch by lost or abandoned gear, catch of non-target species (both fish and non-fish species) (hereinafter referred to as non-target species) and impacts on ecologically related species, in particular endangered species;

(f) take into account the need to protect biodiversity;

(g) take measures to eliminate over-fishing and excess fishing capacity and to ensure that levels of fishing effort do not exceed those commensurate with the sustainable utilization of fisheries resources;

(h) collect and share, in a timely manner, complete and accurate data concerning fishing activities, inter alia, on position, catch of target and non-target species and fishing effort, as set out in Annex 1, as well as information from national, regional and international research programmes;

(i) promote and conduct scientific research in support of fishery conservation and management; and

(j) promote the implementation of conservation and management measures through effective monitoring, control and surveillance.

## Article 6

## The application of the precautionary approach

1. States, directly, and through regional fisheries management organizations or arrangements, shall apply the precautionary approach to conservation, management and exploitation of straddling fish stocks and highly migratory fish stocks as set out in this Agreement in order to protect and preserve the marine environment and the living marine resources.

2. The precautionary apprcach shall include all appropriate techniques and be aimed at setting stock-specific minimum standards for conservation and management taking into account the best scientific information available. States shall be more cautious when information is poor. The absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures.

3. States shall apply the precautionary approach in accordance with the following:

(a) in order to improve decision-making for fishery conservation and management, States shall obtain and share the best scientific information available and develop improved techniques for dealing with risk and uncertainty;

(b) in determining conservation and management measures, States shall take into account, inter alia, uncertainties relating to the size and productivity of the stock(s), precautionary reference points, stock condition in relation to such reference points, levels and distributions of fishing mortality and the impact of fishing activities on non-target and ecologically related species, as well as oceanic, environmental and socio-economic conditions;

(c) in managing fish stocks, States shall consider the impacts of fishing on associated ecosystems. They should develop data collection and research programmes to assess the impact of fishing on non-target and ecologically related species and their environment, adopt plans as necessary to ensure the conservation of such species and consider the protection of habitats of special concern;

(d) taking into account the guidelines set out in Annex 2, States shall determine precautionary reference points, and the action to be taken if they are exceeded. When precautionary reference points are approached, measures shall be taken to ensure that they will not be exceeded. If limit reference points are exceeded, conservation and management action shall be taken immediately to restore the stock(s) in accordance with pre-agreed courses of action;

(e) in cases where the status of target stocks or non-target or ecologically related species is of concern, those stocks and species shall be subject to enhanced monitoring in order to review regularly their status and the efficacy of conservation and management measures so as to facilitate revision of such measures in the light of new information; and

(f) in the case of new or exploratory fisheries, conservative measures including, inter alia, catch and effort limits shall be established as soon as possible and shall remain in force until there are sufficient data to allow assessment of the impact of the fishery on the long-term sustainability of the stocks.

## Article 7

### Compatibility of conservation and management measures

1. Without prejudice to the sovereign rights of coastal States for the purpose of exploring and exploiting, conserving and managing the living marine resources within areas under national jurisdiction as provided for in the Convention, and the right of all States for their nationals to engage in fishing on the high seas in accordance with the Convention:

(a) with respect to straddling fish stocks, the relevant coastal State(s) and the State(s) whose nationals fish for such stocks in the adjacent high seas area shall seek, either directly or through the appropriate mechanisms for cooperation provided for in Part III, to agree upon the measures necessary for the conservation of these stocks in the adjacent high seas areas;

(b) with respect to highly migratory fish stocks, the relevant coastal State(s) and the other State(s) whose nationals fish in the region for these stocks shall cooperate directly or through the appropriate mechanisms for cooperation provided for in Part III with a view to ensuring conservation and promoting the objective of optimum utilization of such stocks throughout the region, both within and beyond the exclusive economic zone.

2. Conservation and management measures taken on the high seas and those taken in areas under national jurisdiction shall be compatible in order to ensure conservation and management of the stocks overall. To this end, coastal States and States fishing on the high seas have a duty to cooperate for the purpose of achieving compatible measures in respect of straddling fish stocks and highly migratory fish stocks. In determining compatible conservation and management measures, States shall:

(a) take into account the conservation and management measures established in respect of the same stock(s) by coastal States in areas under national jurisdiction and ensure that measures established in respect of the high seas do not undermine the effectiveness of those measures established in respect of the same stock(s) by coastal States in areas under national jurisdiction;

(b) take into account the biological unity and other characteristics of the stock(s) and the relationships between the distribution of the stock(s), the fisheries and the geographical particularities of the region, including the extent to which the stock(s) occur and are fished in areas under national jurisdiction;

(c) take into account the respective dependence of the coastal State(s) and the State(s) fishing on the high seas on the stock(s) concerned; and

(d) ensure that the measures do not result in undue harmful impact on the living marine resources as a whole.

3. In giving effect to their duty to cooperate, as provided for in paragraph 1, States shall make every effort to agree on compatible conservation and management measures within a reasonable period of time.

4. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures for settlement of disputes provided for in Part VIII of this Agreement without prejudice to the provisions of article 31.

5. Pending agreement on compatible conservation and management measures, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature. In the event that they are unable to agree on provisional arrangements, the States concerned shall resort to the procedure for the determination of provisional measures provided for in article 30 of this Agreement.

6. The provisional arrangements or measures entered into pursuant to paragraph 5 shall take into account any conservation and management measures agreed by relevant subregional or regional fisheries management organizations or arrangements, shall have due regard to the rights and obligations of other States concerned and shall be without prejudice to the final outcome of the dispute settlement procedure.

7. During the interim period, States shall not jeopardize or hamper the reaching of the final settlement of the dispute or undermine the objective of this Agreement.

## PART III

## MECHANISMS FOR INTERNATIONAL COOPERATION CONCERNING STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

### Article 8

### Cooperation for conservation and management

1. Coastal States and States fishing on the high seas shall, in accordance with the Convention, pursue cooperation in relation to straddling fish stocks and highly migratory fish stocks directly or through appropriate subregional or regional fisheries management organizations or arrangements, taking into account the specific characteristics of the subregion or region, to ensure effective conservation and management of such stock(s).

2. States shall enter into consultations in good faith and without delay, particularly where there is evidence that the stocks concerned may be under threat of over-exploitation or where a new fishery is being pursued for the stock(s). To this end, consultations may be initiated at the request of any interested State with a view to establishing appropriate arrangements to ensure conservation and management of the stock(s). Pending agreement on such arrangements, States shall observe the provisions of this Agreement and shall act in good faith and with due regard to the rights, interests and duties of other States.

3. Where a subregional or regional fisheries management organization or arrangement has the competence to establish conservation and management measures for particular straddling fish stocks or highly migratory fish stocks, States fishing for the stocks on the high seas and relevant coastal States shall give effect to their duty to cooperate by participating in the work of the subregional or regional fisheries management organization or arrangement, in accordance with the mandate and terms of participation of that organization or arrangement. Subject to such terms of participation, the organization or arrangement shall be open to all States having an interest in the stock(s) concerned on a non-discriminatory basis.

4. Only those States that participate in the work of a subregional or regional fisheries management organization or arrangement, or that otherwise cooperate in the application of conservation and management measures established by that organization or arrangement, shall have access to the fishery to which those conservation and management measures apply.

5. Where there is no subregional or regional fisheries management organization or arrangement to establish conservation and management measures for particular straddling fish stock(s) or highly migratory fish stock(s), States shall cooperate to establish such an organization or enter into other appropriate arrangements to ensure conservation and management of such stock(s) and participate in the work of such organization or arrangement.

## Article 9

### Regional fisheries management organizations or arrangements

In establishing subregional or regional fisheries management organizations or arrangements for the conservation and management of straddling fish stocks and highly migratory fish stocks, States shall agree, inter alia, on:

(a) the stock(s) to which conservation and management measures shall apply, taking into account the biological characteristics of the stock(s) concerned and the nature of the fisheries involved;

(b) the area of application, taking into account the relevant provisions of the Convention and the characteristics of the region, including socio-economic, geographical and environmental factors;

(c) the relationship between the work of the new organization or arrangement and the role, objectives and operations of any existing fisheries organizations or arrangements; and

(d) the mechanisms by which the organization or arrangement will obtain scientific advice and review the status of the stock(s) including, where appropriate, the establishment of a scientific advisory body.

## Article 10

### Functions of regional fisheries management organizations and arrangements

In fulfilling their obligation to cooperate through subregional or regional fisheries management organizations or arrangements, States shall:

(a) agree on and comply with conservation and management measures to ensure long-term sustainability of the stock(s);

(b) agree, as appropriate, on allocation of participatory rights such as allocations of allowable catch or levels of fishing effort;

(c) adopt and apply generally recommended international minimum standards for the responsible conduct of fishing operations;

(d) adopt mechanisms by which the organization or arrangement will obtain scientific advice and review the status of the stock(s) and assess the impact of fishing on non-target and ecologically related species;

(e) agree on standards for collection, reporting, verification and exchange of data on fisheries for the stock(s);

(f) compile and disseminate accurate and complete statistical data, as described in Annex 1, to ensure that the best scientific evidence is available, while maintaining confidentiality where appropriate;

(g) promote and conduct scientific assessments of the stocks and relevant research and disseminate the results thereof;

(h) establish appropriate cooperative mechanisms for effective monitoring, control, surveillance and enforcement;

(i) agree on means by which the fishing interests of new members of, or participants in, the organization or arrangement will be accommodated;

(j) agree on decision-making procedures which facilitate the adoption of conservation and management measures in a timely and effective manner;

(k) agree on procedures for the peaceful settlement of disputes by means of compulsory procedures leading up to binding decisions without undue delay, in accordance with Part VIII of this Agreement; and

(l) ensure the full cooperation of their relevant national agencies and industries in the work of the subregional or regional fisheries management organization or arrangement.

## Article 11

## Strengthening existing organizations and arrangements

States shall cooperate to strengthen existing subregional and regional fisheries management organizations and arrangements in order to improve their effectiveness in establishing and implementing conservation and management measures for straddling fish stocks and highly migratory fish stocks.

## Article 12

## Collection and provision of information

1. States shall ensure that fishing vessels flying their flag provide such information as may be necessary in order to fulfil their obligations under this Agreement. To this end, States shall:

(a) collect and exchange scientific, technical and statistical data with respect to fisheries for straddling fish stocks and highly migratory fish stocks in accordance with the provisions of Annex 1;

(b) ensure that data are collected in sufficient detail to facilitate effective stock assessment and are provided in a timely manner to fulfil the requirements of subregional or regional fisheries management organizations or arrangements; and

(c) take appropriate measures to verify the accuracy of such data.

2. States shall cooperate directly or through subregional or regional fisheries management organizations or arrangements to:

(a) agree on the specification of data and the format in which those data are to be provided to subregional or regional fisheries management organizations or arrangements, taking into account the nature of the stocks and the fisheries for those stocks; and

(b) develop and share analytical techniques and stock assessment methodologies to improve measures for the conservation and management of straddling fish stocks and highly migratory fish stocks.

## Article 13

## Enclosed and semi-enclosed seas

In implementing the provisions of this Agreement in respect of straddling fish stocks and highly migratory fish stocks in an enclosed or semi-enclosed sea, States shall also act in a manner consistent with the provisions of article 123, subparagraph (a), of the Convention.

## Article 14

## Areas of high seas forming an enclave surrounded entirely by areas under the national jurisdiction of one State

States shall ensure that measures established in respect of straddling fish stocks or highly migratory fish stocks in areas of the high seas which are surrounded entirely by areas under the national jurisdiction of one State do not undermine the effectiveness of conservation and management measures adopted in respect of the same stocks by the coastal State in the areas under national jurisdiction.

## Article 15

## Transparency

1. Subregional and regional fisheries management organizations or arrangements shall ensure transparency in their decision-making and other activities.

2. Representatives from other intergovernmental organizations and non-governmental organizations concerned with straddling fish stocks and highly migratory fish stocks shall be afforded the opportunity to attend meetings of such bodies as observers or otherwise, as appropriate, in accordance with the procedures of the subregional or regional fisheries management organization or arrangement concerned.

Article 16

New participants

In determining the nature and extent of participatory rights for new members of a subregional or regional fisheries management organization or for new participants in a subregional or regional fisheries management arrangement, States shall take into account, inter alia:

(a) the status of the stock(s) and the existing level of fishing effort in the fishery;

(b) the respective interests, fishing patterns and fishing practices of new and existing members or participants;

(c) the respective contributions of new and existing members or participants to conservation and management of the stock(s), to the collection and provision of accurate data and to the conduct of scientific research on the stock(s);

(d) the needs of coastal fishing communities which are dependent mainly on fishing for the stock(s); and

(e) the interests of developing States from the subregion or region in whose areas of national jurisdiction the stocks also occur, particularly where those States are culturally, traditionally or economically dependent on living marine resources.

PART IV

RESPONSIBILITIES OF THE FLAG STATE

Article 17

Duties of the flag State

1. A flag State whose vessels fish on the high seas shall take the necessary measures to ensure that vessels flying its flag comply with subregional and regional conservation and management measures.

2. The flag State shall authorize vessels flying its flag to be used for fishing on the high seas only where it is able to exercise effectively its responsibilities in respect of such vessels under the Convention and under the provisions of this Agreement.

3. Measures to be taken by the flag State in respect of vessels flying its flag shall include:

(a) control of such vessels on the high seas by means of fishing licences, authorizations or permits, in accordance with applicable procedures agreed on at a subregional, regional or global level, if any;

(b) national legislation to:

(i) prohibit fishing on the high seas by vessels that are not duly licensed or authorized to fish, or fishing on the high seas by such vessels otherwise than in accordance with the conditions of a licence, authorization or permit;

(ii) apply terms and conditions to the licence, authorization or permit sufficient to fulfil any subregional, regional or global obligations of the flag State;

(iii) require that vessels fishing on the high seas must carry the licence, authorization or permit on board the vessel at all times and must produce such licence, authorization or permit on demand for inspection by a duly authorized person; and

(iv) prohibit such vessels from unauthorized fishing in areas under the national jurisdiction of other States;

(c) establishment of a national record of fishing vessels authorized to fish on the high seas;

(d) requirements for marking of fishing vessels and fishing gear for identification in accordance with uniform and internationally recognizable vessel and gear marking systems such as the Food and Agriculture Organization of the United Nations Standard Specifications for the Marking and Identification of Fishing Vessels;

(e) requirements for recording and timely reporting of position, catch (target and non-target species), effort and other relevant fisheries data in accordance with subregional, regional and global standards for collection of such data;

(f) requirements for catch verification (target and non-target species) through such means as observer programmes, inspection schemes, unloading reports, supervision of transshipment and monitoring of landed catches and market statistics;

(g) monitoring, control and surveillance of such vessels, their fishing operations and related activities, by, inter alia:

(i) the implementation of national and regionally agreed inspection schemes, including requirements for such vessels to permit access by duly authorized inspectors from other States;

(ii) the implementation of national and regionally agreed observer programmes, including requirements for such vessels to permit access by observers from other States to carry out the functions agreed under the programme; and

(iii) the development and implementation of vessel monitoring systems, including, as appropriate, satellite transmitter systems, in accordance with national and regionally agreed programmes;

(h) the regulation of transshipment on the high seas to ensure that the effectiveness of conservation and management measures is not undermined; and

(i) the regulation of fishing activities to ensure compliance with subregionally or regionally agreed measures relating to minimizing non-target catches.

4. Where there is a regionally agreed system of monitoring, control and surveillance in effect, States shall ensure that the measures they impose on vessels flying their flag are compatible with that system.

## PART V

## COMPLIANCE AND ENFORCEMENT

### Article 18

### Compliance and enforcement by the flag State

1. The flag State shall ensure compliance by vessels flying its flag with subregionally, regionally or globally agreed measures, rules and regulations for the conservation and management of straddling fish stocks and highly migratory fish stocks. To this end, the flag State shall:

(a) enforce such measures irrespective of where violations occur;

(b) investigate immediately and fully any alleged violation of subregional or regional conservation and management measures, which may include the physical inspection of the vessel(s) concerned, and report promptly to the State alleging the violation and the relevant subregional, regional or international organization or arrangement on the progress and outcome of the investigation;

(c) ensure that, where it has been established, in accordance with the laws of the flag State, that a vessel flying its flag has been involved in the commission of a serious breach of subregional and regional conservation and management measures, the vessel is prohibited from fishing on the high seas until such time as all outstanding criminal or civil judgments in respect of such vessel have been satisfied;

(d) require any vessel flying its flag to give information to the investigating authority regarding catches, activities and fishing operations in the area of an alleged violation, where there are grounds for believing that the vessel has committed such a violation; and

(e) if satisfied that sufficient evidence is available to enable proceedings to be brought in respect of an alleged violation, institute proceedings without delay in accordance with the laws of the flag State and, where appropriate, detain the vessel.

2. All States shall take measures for their nationals to ensure that they comply with subregional or regional conservation and management measures and other international minimum standards. Such measures shall permit cancellation or suspension of authorizations to serve as vessel masters or fishing masters.

3. All investigations and judicial proceedings shall be carried out expeditiously. Sanctions applicable in respect of violations shall be of sufficient gravity as to be effective in securing compliance and to act as a deterrent, and to deprive offenders of the benefits accruing from their illegal activities.

## Article 19

### International cooperation in enforcement

1. A flag State conducting an investigation of an alleged violation may request the assistance of any other State the cooperation of which may assist in the conduct of that investigation. All States shall endeavour to meet reasonable requests made by a flag State in connection with such investigations.

2. Investigations may be undertaken directly by the flag State, in cooperation with other interested State(s), or through the relevant subregional or regional fisheries management organization or arrangement. Information on the progress and outcome of the investigations should be provided to all States having an interest in, or affected by, the alleged violation.

3. States shall assist each other in identifying vessels reported to have engaged in activities undermining the effectiveness of subregional or regional conservation and management measures.

4. States shall, to the extent permitted by national laws and regulations, establish arrangements for making available to prosecuting authorities in other States evidence relating to alleged violations of subregional or regional conservation and management measures.

## Article 20

### Regional agreements and arrangements for compliance and enforcement

1. The flag State, in addition to fulfilling its duties in respect of vessels flying its flag, shall cooperate directly with relevant coastal States and through subregional or regional fisheries management organizations or arrangements in the development of regionally agreed procedures for the conduct of fisheries monitoring, control, surveillance and enforcement. Where appropriate, fisheries monitoring, control, enforcement and surveillance shall be conducted in accordance with such regionally agreed procedures.

2. In the context of subregional and regional arrangements for compliance and enforcement, States shall agree on procedures under which the appropriate authorities of one State may board and inspect a fishing vessel flying the flag of another State, including notification requirements and procedures under which one State might arrest and detain a fishing vessel flying the flag of another State.

3. Where there are reasonable grounds for suspecting that a fishing vessel on the high seas is without nationality, a State may take such action as is necessary to board and inspect the vessel. Where evidence so warrants, the State may institute proceedings in accordance with international law.

4. Where a fishing vessel conceals its identity or indicates a registry to which it does not belong, and there are reasonable grounds for suspecting that such a vessel has undermined the effectiveness of subregional or regional conservation and management measures, a State may take such action with respect to the vessel as is set forth in paragraph 3.

5. Flag States shall provide such information as may be required to be entered into international records or regional registers, as agreed, of vessels fishing or authorized to fish on the high seas.

6. States shall give due publicity to the measures adopted by subregional or regional fisheries management organizations or arrangements concerning the conservation and management of straddling fish stocks and highly migratory fish stocks.

## PART VI

## PORT STATE ENFORCEMENT

### Article 21

### Boarding and inspection by port States

1. A port State shall take such measures, in accordance with international law, as are necessary to promote the effectiveness of subregional and regional conservation and management measures. When taking such measures a port State shall not discriminate in form or in fact against the vessels of any State.

2. A port State may, inter alia, inspect documents, fishing gear and catch on board fishing vessels, when such vessels are voluntarily in its ports and offshore terminals and, except in cases of force majeure, may deny access to the facilities of the port or terminals.

3. Where, following a boarding or inspection by the port State, there are reasonable grounds to suspect that a vessel has contravened or otherwise undermined subregional or regional conservation and management measures or has fished on the high seas without a licence, authorization or permit, the port State shall inform the flag State and request it to take control of the vessel for enforcement purposes. Where the flag State is not in a position to take immediate control of, or otherwise carry out its responsibility for the vessel, the officials of the port State may continue the boarding until the flag State takes control of the vessel for enforcement purposes.

4. Nothing in this article affects the sovereignty of States over ports in their territory in accordance with international law.

## PART VII

## REQUIREMENTS OF DEVELOPING STATES

### Article 22

### Recognition of the special requirements of developing States

1. States shall give full recognition to the special requirements of developing States in relation to conservation, management and development of fisheries for straddling fish stocks and highly migratory fish stocks. To this end, States shall, directly or through the Food and Agriculture Organization of the United Nations, the Global Environment Facility, the Commission for Sustainable Development and other appropriate international and regional organizations and bodies, provide assistance to developing States.

2. In giving effect to the duty to cooperate in the establishment of conservation and management measures for straddling fish stocks and highly migratory fish stocks, States shall take into account the special requirements of developing States, in particular:

(a) the vulnerability of developing States which are dependent on the exploitation of living marine resources for the nutritional requirements of their populations or parts thereof;

(b) the need to avoid adverse impacts on subsistence and small-scale fisheries in developing States, particularly small island developing countries, which are culturally and economically dependent upon the exploitation of living marine resources; and

(c) the need to ensure that the measures do not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto developing States, especially the least-developed amongst them.

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## Article 23

### Forms of cooperation with developing States

1. States shall cooperate to:

(a) enhance the ability of developing States to conserve, manage and develop their own national fisheries for straddling fish stocks and highly migratory fish stocks; and

(b) assist developing States to enable them to participate in high seas fisheries for straddling fish stocks and highly migratory fish stocks, including facilitating access to such fisheries.

2. Specific forms of cooperation with developing States for the purposes set out in this article shall include financial assistance, assistance relating to human resources development, technical assistance, transfer of technology, including joint venture arrangements, and appropriate advisory and consultative services. Assistance should be directed in the following areas:

(a) collection, reporting, verification and exchange of fisheries and fisheries-related data and information;

(b) stock assessment and scientific research; and

(c) monitoring, control, surveillance, compliance and enforcement, including training and capacity-building at the local level, the development and funding of national and regional observer programmes and access to technology and equipment.

## Article 24

### Special assistance for fisheries conservation management and development

1. States shall cooperate to establish voluntary funds to assist developing States pursuant to this Agreement and in particular to enable developing States to meet the costs involved in any proceedings for the settlement of disputes to which they may be parties.

2. States and international and regional organizations should assist developing States in establishing new subregional or regional fisheries organizations or arrangements or strengthening existing organizations or arrangements concerned with the conservation and management of straddling fish stocks and highly migratory fish stocks.

## PART VIII

## PEACEFUL SETTLEMENT OF DISPUTES

### Article 25

### Obligation to settle disputes by peaceful means

States have the obligation to settle their disputes by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

### Article 26

### Prevention of disputes

All States shall cooperate in order to prevent disputes. To this end, they shall agree on efficient and expeditious decision-making procedures within subregional or regional fisheries management organizations or arrangements and strengthen existing decision-making procedures as necessary.

### Article 27

### Disputes of a technical nature

Where a dispute concerns a matter of a technical nature, the States concerned may refer the matter to an ad hoc expert panel established by the parties to the dispute. The panel shall confer with the States concerned and shall endeavour to resolve the matter expeditiously without recourse to binding procedures for the settlement of disputes.

### Article 28

### Settlement of disputes

1. States may use any of the procedures for the settlement of disputes provided for in the Convention. To this end, subject to article 30, they may choose to use the arbitration procedure set out in Annex 3 to this Agreement.

2. In respect of disputes concerning the interpretation or application of this Agreement, the provisions relating to the settlement of disputes contained in the Convention shall apply to the States Parties to this Agreement, whether or not such States are also States Parties to the Convention.

3. In the event that the parties to a dispute, whether or not they are members of, or participants in a subregional or regional fisheries organization or arrangement, are unable to agree on the same procedure for dispute settlement to be applied, the provisions for settlement of disputes under Part XV of the Convention shall apply.

## Article 29

### Procedures for the settlement of disputes within regional organizations or arrangements

States that are members of, or participants in, subregional or regional fisheries management organizations or arrangements shall strengthen or adapt the procedures for the settlement of disputes established by such organizations or arrangements in order to achieve the timely and effective resolution of fisheries disputes. To this end, they shall adopt and comply with procedures for compulsory recourse to binding settlement, such as the arbitration procedure set out in Annex 3, for the expeditious resolution of disputes relating to the conservation and management of straddling fish stocks and highly migratory fish stocks, including recourse to scientific or other expert advice or to an ad hoc expert panel, as necessary.

## Article 30

### Provisional measures

1. Pending the resolution of a dispute in accordance with the provisions of this Part, the parties to the dispute shall make every effort to enter into provisional arrangements of a practical nature. In the event that they are unable to agree on provisional arrangements, and they have not agreed on any other tribunal from which they may obtain provisional measures, the dispute shall be submitted at the request of any party to the dispute to an arbitral tribunal constituted in accordance with Annex 3 for the purpose of obtaining provisional measures.

2. The arbitral tribunal constituted in accordance with Annex 3 shall have jurisdiction to prescribe provisional measures which it considers appropriate under the circumstances to preserve the respective rights of the parties to the dispute or to prevent damage to the stock(s) in question, pending a final resolution of the dispute.

3. The arbitral tribunal constituted in accordance with Annex 3 shall also have jurisdiction to prescribe provisional measures in the circumstances specified under article 7, paragraph 5.

4. Provisional measures may be modified or revoked as soon as the circumstances justifying them have changed or ceased to exist. Such measures may be prescribed, modified or revoked under this article only at the request of a party to the dispute and after the parties have been given an opportunity to be heard.

5. The arbitral tribunal shall forthwith give notice to the parties to the dispute and to such other States Parties as it considers appropriate, of the prescription, modification or revocation of provisional measures.

6. Failing agreement on the constitution of the arbitral tribunal to which a dispute is submitted under this article within 60 days from the date of the request for provisional measures, the International Tribunal for the Law of the Sea established under the Convention may prescribe, modify or revoke provisional measures if it considers that, prima facie, the tribunal which is to be so constituted would have jurisdiction and that the urgency of the situation so requires. Once constituted, the arbitral tribunal may modify, revoke or affirm those provisional measures.

7. The parties to the dispute shall comply promptly with any provisional measures prescribed under this article.

## Article 31

### Limitations on applicability of procedures for the settlement of disputes

The provisions for the settlement of disputes contained in this Agreement do not affect in any way the provisions of article 297 of the Convention.

# PART IX

# NON-PARTICIPANTS

## Article 32

### Non-participants in subregional or regional fisheries management organizations or arrangements

1. Where a State does not participate in the work carried out through a subregional or regional fisheries management organization or arrangement, that State is not discharged from the obligation to cooperate in the conservation and management of the relevant stock(s).

2. A State which does not cooperate with a subregional or regional fisheries management organization or arrangement shall not authorize vessels flying its flag to operate in fisheries which are subject to conservation and management measures established by that organization or arrangement.

3. States which are members of, or participate in, a subregional or regional fisheries management organization or arrangement shall exchange information with respect to the activities of fishing vessels which fly the flags of States which are neither members of, nor participate in, the organization or arrangement and which are operating in the fishery for the relevant stock(s). They shall take measures consistent with this Agreement and with international law to deter activities of such vessels which undermine the effectiveness of subregional or regional conservation and management measures.

## PART X

## ABUSE OF RIGHTS

### Article 33

### Good faith and abuse of rights

States Parties shall fulfil in good faith the obligations assumed under this Agreement and shall exercise the rights recognized in this Agreement in a manner which would not constitute an abuse of right.

## PART XI

## NON-PARTIES TO THIS AGREEMENT

### Article 34

### Encouragement of accession

States Parties shall encourage non-parties to this Agreement to accede to it and to adopt laws and regulations consistent with its provisions. States Parties to this Agreement shall take measures consistent with this Agreement and international law to deter the activities of vessels which undermine the effective implementation of this Agreement.

## PART XII

## REPORTS ON IMPLEMENTATION AND REVIEW CONFERENCE

### Article 35

### Reports on the implementation of this Agreement

1. Not later than two years following the date of adoption of this Agreement, and biennially thereafter, States, subregional and regional organizations and arrangements concerned with the conservation and management of straddling fish stocks and highly migratory fish stocks shall report to the Secretary-General of the United Nations on the implementation of this Agreement.

2. At the second session of the General Assembly of the United Nations following the date of adoption of this Agreement, and biennially thereafter, the Secretary-General shall submit a report to the General Assembly on the progress made in the implementation of the provisions of this Agreement. In compiling the report, the Secretary-General shall take into account information provided by States, the Food and Agriculture Organization of the United Nations and its fisheries bodies, other relevant intergovernmental bodies and relevant non-governmental organizations. The Secretary-General shall also report as required to the Commission on Sustainable Development.

## Article 36

## Review conference

1. Four years after the adoption of this Agreement, the Secretary-General of the United Nations shall convene a conference, with a view to assessing the effectiveness of this Agreement in securing the conservation and management of straddling fish stocks and highly migratory fish stocks. The Secretary-General shall invite to the conference all those States and entities entitled to become parties to this Agreement as well as those entitled to participate as observers.

2. The conference shall review and assess the adequacy of the provisions herein and, if necessary, propose means of strengthening the substance and methods of implementation of those provisions in order to better address any continuing problems in fisheries for straddling fish stocks and highly migratory fish stocks.

# PART XIII

# FINAL PROVISIONS

## Article 37

## Signature

This Agreement shall remain open for signature at United Nations Headquarters by the States and entities referred to in article 305, paragraph 1(a), (c), (d), (e) and (f), of the Convention for 12 months from the date of its adoption.

## Article 38

## Ratification, acceptance, approval and formal confirmation

This Agreement is subject to ratification, acceptance or approval by States and the other entities referred to in article 305, paragraph 1(a), (c), (d) and (e), of the Convention, and to formal confirmation, in accordance with Annex IX of the Convention, by the entities referred to in article 305, paragraph 1(f), of the Convention. The instruments of ratification, acceptance or approval and of formal confirmation shall be deposited with the Secretary-General of the United Nations.

## Article 39

### Accession

This Agreement shall remain open for accession by States and the other entities referred to in article 305, paragraph 1(a), (c), (d) and (e), of the Convention. Accession by the entities referred to in article 305, paragraph 1(f), of the Convention shall be in accordance with Annex IX of the Convention.

## Article 40

### Entry into force

1. This Agreement shall enter into force 30 days after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession.

2. For each State ratifying or acceding to this Agreement after the deposit of the fortieth instrument of ratification, acceptance, approval or accession, this Agreement shall enter into force on the thirtieth day following the deposit of its instrument of ratification, acceptance, approval or accession.

## Article 41

### Reservations and exceptions

No reservations or exceptions may be made to this Agreement.

## Article 42

### Declarations and statements

Article 41 does not preclude a State, when signing, ratifying or acceding to this Agreement, from making declarations or statements, however phrased or named, with a view, inter alia, to the harmonization of its laws and regulations with the provisions of this Agreement, provided that such declarations or statements do not purport to exclude or modify the legal effect of the provisions of this Agreement in their application to that State.

## Article 43

### Relation to other conventions and international agreements

1. This Agreement shall not alter the rights and obligations of States Parties which arise from other conventions and agreements compatible with this Agreement and which do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Agreement.

2. Two or more States Parties may conclude agreements modifying or suspending the operation of provisions of this Agreement, applicable solely to the relations between them, provided that such agreements do not relate to a provision derogation from which is incompatible with the effective execution of the object and purpose of this Agreement, and provided further that such agreements shall not affect the application of the basic principles embodied herein, and that the provisions of such agreements do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Agreement.

3. States Parties intending to conclude an agreement referred to in paragraph 2 shall notify the other States Parties through the depositary of this Agreement of their intention to conclude the agreement and of the modification or suspension for which it provides.

## Article 44

### Amendment

1. A State Party may, by written communication addressed to the Secretary-General of the United Nations, propose an amendment to this Agreement and request the convening of a conference to consider such proposed amendment. The Secretary-General shall circulate the communication to all States Parties. If, within six months from the date of the circulation of the communication, not less than one half of the States Parties reply favourably to the request, the Secretary-General shall convene the conference.

2. The decision-making procedure applicable at the conference convened pursuant to paragraph 1 shall be the same as that applicable at the conference that has elaborated this Agreement, unless otherwise decided by the conference. The conference should make every effort to reach agreement on any amendments by way of consensus, and there should be no voting on them until all efforts at consensus have been exhausted.

3. Once adopted, amendments to this Agreement shall be open for signature by States Parties for 12 months from the date of adoption, at United Nations Headquarters in New York, unless otherwise provided in the amendment itself.

4. Articles 38, 39, and 48 apply to all amendments to this Agreement.

5. Amendments to this Agreement shall enter into force for the States Parties ratifying or acceding to them on the thirtieth day following the deposit of instruments of ratification or accession by two thirds of the States Parties. Thereafter, for each State Party ratifying or acceding to an amendment after the deposit of the required number of instruments of ratification or accession, the amendment shall enter into force on the thirtieth day following the deposit of its instrument of ratification or accession.

6. An amendment may provide that a smaller or a larger number of ratifications or accessions shall be required for its entry into force than are required by this article.

## Article 45

### Denunciation

1. A State Party may, by written notification to the Secretary-General of the United Nations, denounce this Agreement and may indicate its reasons. Failure to indicate reasons shall not affect the validity of the denunciation. The denunciation shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.

2. The denunciation shall not in any way affect the duty of any State Party to fulfil any obligation embodied in this Agreement to which it would be subject under international law independently of this Agreement.

## Article 46

### Status of Annexes

The Annexes form an integral part of this Agreement and, unless expressly provided otherwise, a reference to this Agreement or to one of its Parts includes a reference to the Annexes relating thereto.

## Article 47

### Depositary

The Secretary-General of the United Nations shall be the depositary of this Agreement and any amendments thereto.

## Article 48

### Authentic texts

The Arabic, Chinese, English, French, Russian and Spanish texts of this Agreement are equally authentic.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized thereto, have signed this Agreement.

DONE AT New York on _____, in a single original, in the Arabic, Chinese, English, French, Russian and Spanish languages.

## Annex 1

## MINIMUM STANDARD FOR COLLECTION AND SHARING OF DATA

1. The timely collection, compilation and analysis of data are fundamental to effective conservation and management of straddling fish stocks and highly migratory fish stocks. To this end, data from fisheries for these stocks on the high seas and those in areas under national jurisdiction are required and should be collected and compiled in such a way as to enable statistically meaningful analysis for the purposes of fishery conservation and management. These data include catch and fishing effort statistics and other fishery-related information, such as vessel-related and other data for standardizing fishing effort. Data collected should also include information on non-target and ecologically related species. All data should be verified to ensure accuracy. Confidentiality of non-aggregated data should be maintained.

2. Assistance, including training, financial and technical assistance, should be provided to developing countries in order to build capacity in the field of conservation and management of living marine resources. Assistance should focus on enhancing capacity to implement data collection and verification, observer programmes, data analysis and research projects supporting stock assessments. The fullest possible involvement of developing country scientists and managers in conservation and management of straddling fish stocks and highly migratory fish stocks should be promoted.

### Principles of data collection

3. The following general principles should be considered in defining the parameters for collection, compilation, and exchange of data from high seas fishing operations for straddling fish stocks and highly migratory fish stocks:

(a) States should ensure that data are collected from vessels flying their flag on fishing activities according to the operational characteristics of each fishery (e.g. individual trawl tow, long-line set, school fished for pole-and-line and purse-seine, day fished for troll) and in sufficient detail to facilitate effective stock assessment;

(b) States should ensure that fishery data are verified through an appropriate system;

(c) States shall compile fishery-related and other supporting scientific data in an internationally agreed format and provide them in a timely manner to the relevant subregional or regional fisheries organization or arrangement;

(d) States shall agree, within the framework of subregional or regional fisheries organizations or arrangements, on the specification of data and the format in which they are to be provided, in accordance with the provisions of this Annex and taking into account the nature of the stocks and the fisheries for those stocks in the region. The subregional or regional fisheries organizations or arrangement should request non-participants to provide data concerning relevant fishing activities by vessels flying their flag;

(e) subregional or regional fisheries organizations or arrangements shall compile data and make them available in a timely manner and in an agreed format to all interested States under the terms and conditions established by the organization or arrangement; and

(f) scientists of the flag State and from the relevant subregional or regional fisheries organization or arrangement should analyse the data separately or jointly, as appropriate.

Basic fishery data

4. States should collect the following types of data in sufficient detail to facilitate effective stock assessment:

(a) time series of catch and effort statistics by fishery and fleet;

(b) total catch in number and/or nominal weight [defined by FAO as: (landings + losses due to dressing, handling and processing - gains prior to landings) x conversion factors] by species (both target and non-target) as is appropriate to each fishery;

(c) discard statistics, including estimates where necessary, reported as number or nominal weight by species, as is appropriate to each fishery;

(d) effort statistics appropriate to each fishing method; and

(e) fishing location, date and time fished, and other statistics on fishing operations as appropriate.

Scientific data supporting stock assessment

5. States should collect and exchange scientific information to support stock assessment including, where appropriate:

(a) length, weight and sex composition of the catch;

(b) other biological information supporting stock assessments such as information on age, growth, recruitment, distribution and stock identity; and

(c) other relevant research, including surveys of abundance, biomass surveys, hydro-acoustic surveys, research on environmental factors affecting stock abundance, and oceanographic and ecological studies.

Vessel data and information

6. States should collect the following types of vessel-related data for standardizing fleet composition and vessel fishing power and for converting between different measures of effort in the analysis of catch and effort data:

(a) vessel identification, flag and port of registry;

(b) vessel type;

(c) vessel specifications (e.g. material of construction, date built, registered length, gross registered tonnage, power of main engine(s), hold capacity, catch storage methods); and

(d) fishing gear description (e.g. type, amount and gear specifications).

7. The following information need not be collected if available through other means:

(a) navigation and position fixing aids;

(b) communication equipment and international radio call sign; and

(c) crew size.

Reporting

8. A flag State should ensure that vessels flying its flag send to its national fisheries administration the following data on high seas fishing operations at frequent intervals:

(a) catch and effort log book data, including data on fishing operations;

(b) catch and effort reports by radio, telex, facsimile and satellite transmission.

Data verification

9. States or, as appropriate, subregional or regional fisheries management organizations or arrangements, should establish mechanisms for verifying fishery data, including:

(a) position verification through vessel monitoring systems;

(b) scientific observer programmes to monitor catch, effort, catch composition (target and non-target) and other details of fishing operations;

(c) vessel trip, landing and transshipment reports; and

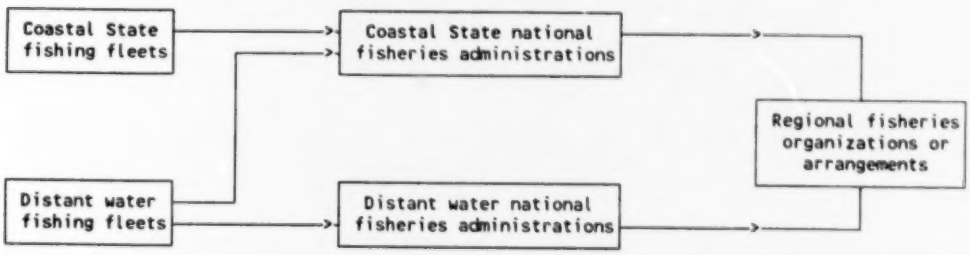
(d) port sampling.

Data exchange

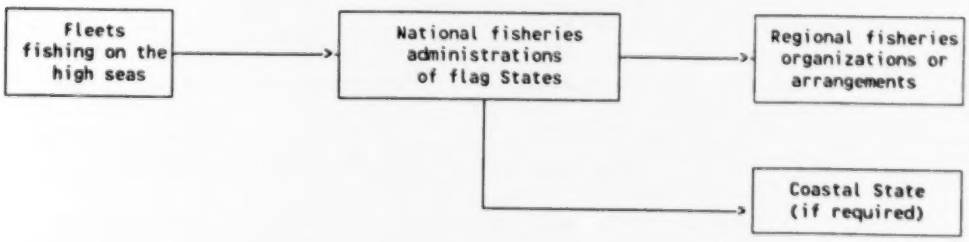
10. Data collected by flag States must be shared with other flag States and relevant coastal States through appropriate subregional or regional fisheries organizations or arrangements. Such organizations or arrangements shall endeavour to compile data from the stocks as a whole and make data available to all interested parties. Subregional or regional fisheries organizations and arrangements should, to the extent feasible, develop database management systems which provide access to data electronically.

11. The following models of data exchange outline mechanisms currently in effect:

Data flow arrangements within EEZs


Coastal State fishing fleets
Coastal State national fisheries administrations
Regional fisheries organizations or arrangements
Distant water fishing fleets
Distant water national fisheries administrations

Data flow arrangements for high seas fishing operations


Fleets fishing on the high seas
National fisheries administrations of flag States
Regional fisheries organizations or arrangements
Coastal State (if required)

12. At the global level, collection and dissemination of data should be effected through the Food and Agriculture Organization of the United Nations (FAO). Where a subregional or regional fisheries organization or arrangement does not exist, FAO may also do the same at a regional level by arrangement with the States concerned.

Annex 2

## SUGGESTED GUIDELINES FOR APPLICATION OF PRECAUTIONARY REFERENCE POINTS IN CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

1. A precautionary reference point is an estimated value derived through an agreed scientific procedure, which corresponds to the state of the resource and of the fishery, and which can be used as a guide for fisheries management.

2. Two types of precautionary reference points should be used: conservation, or limit, reference points and management, or target, reference points. Limit reference points set boundaries which are intended to constrain harvesting within safe biological limits within which the stock(s) can produce maximum sustainable yield (MSY). Target reference points are intended to meet management objectives.

3. Precautionary reference points should be stock-specific to account, inter alia, for the reproductive capacity, the resilience of each stock, and the characteristics of fisheries exploiting the stock, as well as other sources of mortality and major sources of uncertainty.

4. Management strategies shall seek to maintain or restore populations of harvested stocks, and where necessary associated species, at levels consistent with previously agreed precautionary reference points. Such reference points shall be used to trigger pre-agreed conservation and management action. Management strategies shall include measures which can be implemented when precautionary reference points are approached.

5. Fishery management strategies shall ensure that the risk of exceeding limit reference points is very low. If a stock falls below a limit reference point or is at risk of falling below such a reference point, conservation and management action should be initiated to facilitate stock recovery. Fishery management strategies shal ensure that target reference points are not exceeded on average.

6. When information for determining reference points for a fishery is poor or absent, provisional reference points shall be set. Provisional reference points may be established by analogy to similar and better-known stocks. In such situations, the fishery shall be subject to enhanced monitoring so as to enable revision of provisional reference points as improved information becomes available.

7. The fishing mortality rate which generates MSY should be regarded as a minimum standard for limit reference points. For stocks which are not over-fished, fishery management strategies shall ensure that fishing mortality does not exceed that which corresponds to MSY, and that the biomass does not fall below a pre-defined threshold. For over-fished stocks, the biomass which would produce MSY can serve as a rebuilding target.

## Annex 3

## ARBITRATION PROCEDURE

### Article 1

Subject to Part VIII, any party to a dispute may submit the dispute to arbitration by written notification addressed to the President of the International Tribunal for the Law of the Sea, who shall notify the other party or parties to the dispute and constitute an arbitral tribunal as set out herein. The notification shall state the subject matter of arbitration and include, in particular, the articles of this Agreement the interpretation or application of which are at issue.

### Article 2

1. In disputes between two parties, the arbitral tribunal shall consist of three members. Each of the parties to the dispute shall appoint an arbitrator and the two arbitrators so appointed shall designate by common agreement the third arbitrator who shall be the President of the tribunal. The latter shall not be a national of one of the parties to the dispute, nor have his or her usual place of residence in the territory of one of these parties, nor be employed by any of them, nor have dealt with the case in any other capacity.

2. In disputes between more than two parties, parties in the same interest shall appoint one arbitrator jointly by agreement.

3. Any vacancy shall be filled in the manner described for the initial appointment.

### Article 3

1. If the President of the arbitral tribunal has not been designated within 21 days of the appointment of the second arbitrator, the President of the International Tribunal for the Law of the Sea shall, at the request of a party, designate the President within a further 21 days. The person so appointed shall not be a national of one of the parties to the dispute, nor have his or her usual place of residence in the territory of one of these parties, nor be employed by any of them, nor have dealt with the case in any other capacity.

2. If one of the parties to the dispute does not appoint an arbitrator within 21 days of receipt of the request, the other party may inform the President of the International Tribunal for the Law of the Sea who shall make the designation within a further twenty-one day period.

3. If the President of the International Tribunal for the Law of the Sea is unable to act under this article or is a national of one of the parties to the dispute, the appointment shall be made by the next senior member of the International Tribunal for the Law of the Sea who is available and is not a national of one of the parties.

Article 4

The tribunal shall render its decisions in accordance with the provisions of this Agreement, the Convention and international law.

Article 5

Within 20 days of the constitution of the tribunal, the parties to the dispute shall file a memorandum with the tribunal, copies of which shall be transmitted to all parties.

Article 6

Unless the parties to the dispute otherwise agree, the arbitral tribunal shall determine its own rules and procedures, assuring to each party full opportunity to be heard and to present its case.

Article 7

The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, using all means at their disposal, shall:

(a) provide it with all relevant documents, facilities and information; and

(b) enable it when necessary to call witnesses or experts and receive their evidence and to visit the localities to which the case relates.

Article 8

The parties and the arbitrators are under an obligation to protect the confidentiality of any information they receive in confidence during the proceedings of the arbitral tribunal.

Article 9

Unless the arbitral tribunal decides otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the parties to the dispute in equal shares.

Article 10

Any decision of the arbitral tribunal, whether relating to procedure or substance, shall be taken by a majority of its members. In the event of an equality of votes, the President shall have the casting vote.

Article 11

If one of the parties to a dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and make its award. Absence of a party or failure of a party to defend its case shall not constitute a bar to the proceedings. Before making its award, the arbitral tribunal must satisfy itself, not only that it has jurisdiction over the dispute, but also that the claim is well founded in fact and in law.

Article 12

1. The award of the arbitral tribunal shall be confined to the subject-matter of the dispute and state the reasons on which it is based. It shall contain the names of the members who have participated and the date of the award. Any member of the tribunal may attach a separate or dissenting opinion to the award.

2. The tribunal shall communicate its decision to all parties within 30 days of the end of the hearing. Reasons in writing shall be communicated to the parties within 60 days of the decision.

Article 13

The award shall be final and without appeal, unless the parties to the dispute have agreed in advance to an appellate procedure. It shall be complied with by the parties to the dispute.

Article 14

Any controversy which may arise between the parties to the dispute as regards the interpretation or manner of implementation of the award may be submitted by either party for decision to the arbitral tribunal which made the award. For this purpose, any vacancy in the tribunal shall be filled in the manner provided for in the original appointments of the members of the tribunal.

Article 15

The provisions of this Annex shall apply, *mutatis mutandis*, to any dispute involving any entities.

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